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An Act To Clarify the Application of Certain Statutory Requirements to Foreclosures

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, provisions in Public Law 2009, chapter 402 relating to the notices of a mortgagor's right to cure default were intended to apply to all residential mortgage loans; and

Whereas, an exception to the notice provision applicable to certain mortgage loans was not repealed in Public Law 2009, chapter 402; and

Whereas, this legislation repeals the exception so that the requirements for notices to cure default apply to all residential mortgages; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 9-A MRSA §5-111, sub-§6 is enacted to read:

6. Notwithstanding the other provisions of this section, a notice to cure default for a consumer credit transaction secured by a mortgage subject to Title 14, section 6111 must satisfy the requirements of Title 14, section 6111 and not the requirements of this section.

Sec. A-2. 14 MRSA §6111, sub-§5, as enacted by PL 1997, c. 579, §4, is repealed.

Sec. A-3. Application. This Part applies to any mortgage required to comply with the Maine Revised Statutes, Title 14, section 6111 for which a notice to cure default pursuant to Title 14, section 6111 has not been issued by a mortgagee before the effective date of this Part.

PART B

Sec. B-1. 14 MRSA §2401, sub-§3, ¶G, as enacted by PL 2009, c. 402, §9, is amended to read:

G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure and sale," the street address of the real estate involved, if any, and the book and page number of the mortgage, if any.

Sec. B-2. 14 MRSA §6111, sub-§1-A, ¶C, as enacted by PL 2009, c. 402, §11, is amended to read:

C. An itemization of any other charges that must be paid in order to satisfy the full obligations of the loan ~~to~~ to cure the default;

Sec. B-3. 14 MRSA §6203-A, as amended by PL 2009, c. 402, §16, is repealed and the following enacted in its place:

§ 6203-A. Power of sale; procedure; notice; form

1. Power of sale. Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership, limited liability company or trustee of a trust and that contains a power of sale, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must prominently state the street address of the real estate encumbered by the mortgage deed, if any, and the book and page number of the mortgage, if any. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. A copy of the notice must, at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to the mortgagor or the mortgagor's representative at the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the order of priorities set out in section 6205.

2. Notice to tenants; effect on title. In addition to the notices provided pursuant to subsection 1, the mortgagee shall provide a copy of the notice to a residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any residential tenant. Notice to a residential tenant may be served on the

residential tenant by sheriff or may be sent by first class mail and registered mail at the residential tenant's last known address. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 at least 21 days after a mortgagee has served the notice required by this subsection. This subsection may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. The failure to provide the notice required by this subsection does not affect the validity of the foreclosure sale.

3. Form of foreclosure notice. The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing herein may be construed to prevent the use of other forms.

FORM

Mortgagee's sale of real estate

By virtue of and in execution of the Power of Sale contained in a certain Mortgage Deed given by to dated and recorded in the County Registry of Deeds, Book, Page, of which Mortgage the undersigned is the present holder, (if by assignment, or in any fiduciary capacity give reference) for breach of the conditions of said Mortgage and for the purpose of foreclosing the same there will be sold at Public Sale at o'clock, M. on the day of 20....., at, all and singular the premises described in said Mortgages, (in case of partial releases state exceptions).

To wit: "(Description exactly as in the Mortgage, including all reference to title, restrictions, encumbrances, etc., as made in the Mortgage)".

Terms of Sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be and any other terms or conditions relating to the sale).

Other terms to be announced at the sale.

Signed:
(Present holder of Mortgage)

..... 20.....

4. Notice of sale. A notice of sale in subsection 3, published in accordance with this chapter or in accordance with the power in the mortgage together with such other or further notice, if any, as is required by the mortgage, is sufficient notice of the sale, and the premises are considered to have been sold, and the deed thereunder must convey the premises subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; but no purchaser at the sale is bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of the sale, that are not stated at the sale and included in the seller's contract with the purchase.

5. Public sale. At a public sale pursuant to this section, a mortgagee may bid and may purchase any real estate sold at such sale, as long as the mortgagee is the highest bidder. If the real estate is sold for an amount in excess of the outstanding balance of the mortgage together with all interest and costs, said excess must be used to satisfy any other encumbrances on said property and after all said encumbrances are satisfied together with all interest and costs, any excess then remaining must be paid to the mortgagor. If the mortgagor or any person holding an encumbrance cannot be found after a diligent search, the money must be paid into the Superior Court in the county where the land lies for the benefit of the mortgagor or the holder of any such encumbrance.

Sec. B-4. 14 MRSA §6203-B, as enacted by PL 1967, c. 424, §2, is amended to read:

§ 6203-B. Copy of notice; affidavit; recording; evidence

The person selling shall, within 30 days after the sale, cause a copy of the notice as published and ~~his~~ the person's affidavit, fully and particularly stating ~~his~~ the person's acts, or the acts of ~~his~~ the person's principal or ward, to be recorded in the registry of deeds for the county where the land lies. If the affidavit shows that the requirements of the power of sale and ~~this chapter~~ section 6203A, subsection 1 have in all respects been complied with, the affidavit or a certified copy of the record thereof shall ~~be~~ must be admitted as evidence that the power of sale was duly executed. In case of an error or omission in the affidavit recorded as aforesaid, the Superior Court, on petition and after such notice as it may order may, if it ~~deems~~ determines proper, authorize the recording of an affidavit amending, correcting or in substitution for an affidavit so recorded, and the affidavit so authorized to be recorded or a certified copy of the record thereof shall ~~be~~ must have the same effect and shall ~~be~~ must be admitted in evidence, as if it had been recorded within said 30 days, but such subsequent affidavit shall ~~do~~ does not prejudicially affect any title or interest in land ~~which~~ that may have arisen or have been created between the recording of the original and of the subsequent affidavit.

Sec. B-5. 14 MRSA §6321, 3rd ¶, as amended by PL 2009, c. 402, §17, is further amended to read:

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall within ~~1060~~ days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, if any, which must be prominently stated on the first page of the complaint, state the book and page number of the mortgage, if any, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk's certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently

state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. Within 310 days of recording a copy of the complaint or a clerk's certificate of the filing in the registry of deeds submitting the complaint for filing with the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate as submitted to the court that prominently states, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any, to the municipal tax assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of any land leased by the mortgagor. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale.

Sec. B-6. 14 MRSA §6321-A, sub-§11, ¶A, as enacted by PL 2009, c. 402, §18, is amended to read:

A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the ~~loan~~ action, except that the mortgagee may participate by telephone or electronic means as long as that mortgagee is represented with authority to agree to a proposed settlement;

Sec. B-7. 14 MRSA §6321-A, sub-§13, as enacted by PL 2009, c. 402, §18, is amended to read:

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide. ~~If the report is mediation did not the result of ain the~~ settlement or dismissal of the caseaction, the report must include the outcomes of the Net Present Value Worksheet. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith.

Sec. B-8. 14 MRSA §6322-A, as enacted by PL 2009, c. 402, §19, is amended to read:

§ 6322-A. Notice to tenants of foreclosure judgment

The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide a copy of the foreclosure judgment to any residential tenant of the premises. Upon request from a mortgagee, the mortgagor shall provide the name, address and other contact information for any residential tenant. A residential tenant who receives written notice under this section is not required to file any responsive pleadings and must receive written notice of all subsequent proceedings including all matters through and including sale of the property. The mortgagee shall provide written notice to the residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential rental unit. Notice may be provided to a residential tenant by first class mail and registered mail at the residential tenant's last known address only after the mortgagee has made 2 good faith efforts to provide written notice to the residential tenant in person. ~~After providing the notice required by this section, and upon expiration of the redemption period, the mortgagee may institute an action for forcible entry and detainer pursuant to section 6001.~~ A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 after providing the notice required by this section and after the expiration of the redemption period. This section may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a judicial foreclosure action. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale.

Sec. B-9. Retroactivity. This Part applies retroactively to June 15, 2009.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 124th
Legislature, Second Regular Session, unless otherwise indicated.